

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NICHOLAS J. VISCONTI and MARGARET VISCONTI,

07 Civ. 3642 (LMM)

Plaintiffs,

**ANSWER TO
VERIFIED COMPLAINT**

-against-

HILTON HOTELS CORPORATION d/b/a
CARIBE HILTON and HILTON INTERNATIONAL
CO. d/b/a CARIBE HILTON,

Defendants.
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Defendants Hilton Hotels Corporation and Hilton International Co., incorrectly sued herein as Hilton Hotels Corporation d/b/a Caribe Hilton and Hilton International Co. d/b/a Caribe Hilton, by their attorneys, KARDARAS & KELLEHER LLP, answering the Verified Complaint of the plaintiffs herein:

AS TO THE FIRST CAUSE OF ACTION

1. Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph 1 of the Verified Complaint.
2. Denies each and every allegation contained in paragraph 2 of the Verified Complaint, except admits that defendant Hilton Hotels Corporation is a foreign business corporation.
3. Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph 3 of the Verified Complaint.
4. Denies each and every allegation contained in paragraph 4 of the Verified Complaint, except admits that defendant Hilton International Co. is a foreign business corporation.

5. Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph 5 of the Verified Complaint.

6. Denies each and every allegation contained in paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26 and 28 of the Verified Complaint.

7. Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph 20, except leaves all questions of law to this Honorable Court and plaintiffs to their proof.

8. Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph 21, except leaves all questions of law to this Honorable Court and plaintiffs to their proof.

9. Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph 27, except leaves all questions of law to this Honorable Court and plaintiffs to their proof.

AS TO THE SECOND CAUSE OF ACTION

10. Defendants repeat, reiterate and reallege each and every allegations, denials and admissions made to the paragraphs of the verified complaint contained in paragraphs 1 through 28 as though more fully set forth at length herein.

11. Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph 30, 31 and 32, except leaves all questions of law to this Honorable Court and plaintiffs to their proof.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

12. The Verified Complaint fails to state a claim upon which relieve can be granted against these answering defendants.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

13. To the extent that plaintiff sustained any injuries or damages as alleged in the Verified Complaint, these injuries or damages were caused in whole or in part by other intervening causes and, therefore, these answering defendants are not liable.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

14. To the extent that plaintiff suffered any injuries or damages as alleged in the Verified Complaint, these injuries or damages were caused in whole or in part by acts or omissions of another or others over whom these answering defendants had no control or right of control, whose conduct these answering defendants had no reason or opportunity to anticipate, and for whose conduct these answering defendants are not responsible and cannot be held liable.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

15. Plaintiffs lack capacity and standing to sue by reason of the fact that no duty was owed to the plaintiffs at the time referred to in the Verified Complaint.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

16. Upon information and belief, if plaintiff suffered any injuries as alleged in the Verified Complaint, said injuries were the result of plaintiff's own culpable conduct.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

17. Plaintiff's recovery, if any, should be reduced by the relative amount of any comparative fault attributable to plaintiff, his agents or persons other than the answering defendants.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

18. If these answering defendants are found liable to plaintiff for any non-economic loss, as defined in Article 16 of the CPLR, such liability equals 50% or less of the total liability of all persons liable, and the aggregate liability of such other persons equals or exceeds 50% of the total liability, then these answering defendants' liability, if any, to plaintiffs for a non-economic loss shall not exceed these answering defendants' equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for such non-economic loss.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

19. Any past or future costs or expenses incurred or to be incurred by plaintiffs for economic loss have been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

20. Any injuries or damages that plaintiff may have sustained were proximately caused by the contributory negligence, fault, carelessness and/or lack of ordinary care of others, including plaintiff and third parties, and not as a result of lack of care on the part of these answering defendants,.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

21. Any injuries or damages that plaintiff may have sustained were caused by a superseding condition, negating any liability on the part of these answering defendants.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

22. Plaintiff lacks capacity and standing to sue by reason of the fact that no duty was owed to the allegedly injured plaintiff by these answering defendants at the time

referred to in plaintiffs' Verified Complaint and, therefore, plaintiffs have failed to allege facts sufficient to state a claim upon which relief can be granted against these answering defendants.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

23. Upon information and belief, the allegedly injured plaintiff knowingly and voluntarily assumed all alleged risks of the activities in to which he entered.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

24. The Verified Complaint should be dismissed and/or transferred to the United States District Court for the District of San Juan, Puerto Rico on the basis of improper venue.

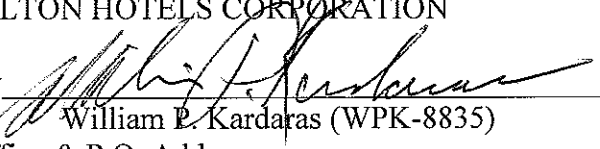
WHEREFORE, defendants Hilton Hotels Corporation and Hilton International Co., incorrectly sued herein as Hilton Hotels Corporation d/b/a Caribe Hilton and Hilton International Co. d/b/a Caribe Hilton, demand judgment dismissing the verified complaint in all respects, and for the costs and disbursements of this action, including reasonable attorneys' fees, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, NY
May 11, 2007

Respectfully submitted,

KARDARAS & KELLEHER LLP
Attorneys for Petitioner-Defendant
HILTON HOTELS CORPORATION

By


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